

**Notice of Allowability**

Application No.

10/538,997

Examiner

Yong Chu

Applicant(s)

DING ET AL.

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1626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 10/31/2007.
2. ☒ The allowed claim(s) is/are 75-83 (renumbered as 1-9).
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).  
\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.  
(a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached  
1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.  
(b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.  
Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |   |
|--|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)   | 5. <input type="checkbox"/> Notice of Informal Patent Application                     |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),<br>Paper No./Mail Date _____    | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                   |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance  |
|  | 9. <input type="checkbox"/> Other _____   |

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## DETAILED ACTION

Claims 75-83 are pending in the instant application.

Claims 75-80, and 83 are directed to an allowable product. Pursuant to the procedures set forth in MPEP § 821.04(b), claims 81 and 82 directed to the process of using the allowable product, previously withdrawn from consideration as a result of a restriction requirement, claims 81 and 82 hereby rejoined and fully examined for patentability under 37 CFR 1.104.

Because a claimed invention previously withdrawn from consideration under 37 CFR 1.142 has been rejoined, **the related restriction requirement groups of product claims and process claims as set forth in the Office action mailed on 07/27/2006 is hereby withdrawn.** In view of the withdrawal of the restriction requirement as to the rejoined inventions, applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

### ***Response to Amendment***

The Amendment by Applicants' representative Cynthia M. Bouchez dated on 10/31/2007 has been entered.

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### ***Response to Arguments***

#### **Claim Objection**

The objection of Claim 75 for inconsistent use of the term "Formula I" has been obviated by the Amendment filed on 10/31/2007.

The objection to Claim 75-80 and 83 for containing elected and non-elected subject matter has been obviated by the Amendment removing the non-elected subject matter.

#### ***Examiner's amendment***

An examiner's amendment to the record with authorization from Applicant's representative Ms. Cynthia M. Bouchez on 11/16/2007 appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

The application has been amended as follows:

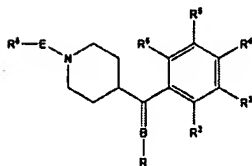
In claim 81, line 1, **delete** "insects" after "A method of controlling", and **insert** --tobacco budworm--.

In claim 82, line 1, **delete** "insects" after "A method of controlling", and **insert** --tobacco budworm--.

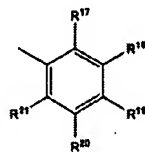
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**Reasons for Allowance**

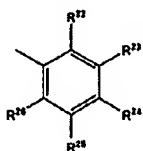
The present invention is directed to a compound of the formula



, a N-oxides, and agriculturally-acceptable salts thereof, a composition containing said compounds and a method of using said composition to control tobacco budworm, and a method of use the product for controlling tobacco budworm, wherein **B** is  $\text{NNR}^{15}\text{C}(=\text{O})^*$  or  $\text{NNR}^{15}\text{SO}_2^*$ , wherein  $\text{R}^{15}$  is H or



alkyl; **R** is

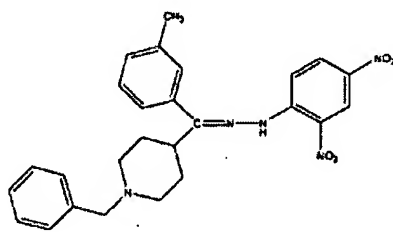
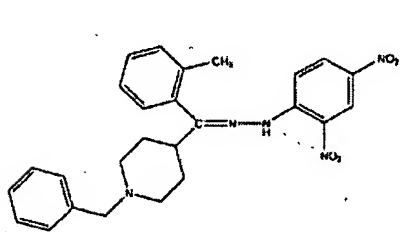


; **R**<sup>8</sup> is

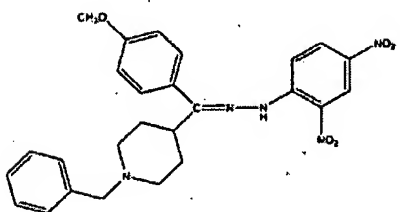
, and the remaining subject matter as defined in claim 75.

The closest prior art at the record is by Kuroyan et al., *Armianskii Khimicheskii Zhurnal*, (1983), 36(9), pp614-617.

Kuroyan et al. disclose compounds of formulae

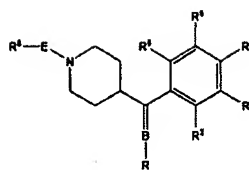


, and



. The prior art compounds are patentably distinct

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from the instantly claimed compounds of formula in claim 75, because the prior art compound has **B** as –NNH– group, patentably distinct from the instantly claimed compounds wherein **B** is  $\text{NNR}^{15}\text{C}(=\text{O})^*$  or  $\text{NNR}^{15}\text{SO}_2^*$ , wherein  $\text{R}^{15}$  is H or alkyl.

The claims of method of using are supported by the data disclosed in the specification. Therefore, claims 75-83 are allowed.

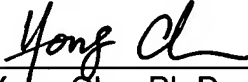
### ***Telephone Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yong Chu whose telephone number is 571-272-5759. The examiner can normally be reached on 7:00 am - 3:30 pm EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph K. McKane can be reached on 571-272-0699. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR

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system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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Yong Chu, Ph.D.  
Patent Examiner  
Art Unit 1626



REBECCA ANDERSON  
PRIMARY EXAMINER



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Joseph K. McKane  
Supervisory Patent Examiner  
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